

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Robert J. Byrnes, Director)
and Stockholder of)
First Savings Bank)
Arlington, Texas)

No.: DAL-95-05

Dated: January 27, 1995

STIPULATION AND CONSENT TO THE ENTRY OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Robert J. Byrnes ("Byrnes"), director and stockholder of First Savings Bank, FSB, Arlington, Texas (OTS No. 08287) ("First Savings Bank"), that OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Robert J. Byrnes, pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i).¹

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue Order of Assessments of Civil Money Penalties where respondent has consented to the issuance of the Order of Assessment of Civil Money Penalty ("Order");

WHEREAS, Byrnes desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms:

1. JURISDICTION

(a) First Savings Bank is a "savings association" within the meaning

1. All references to the U.S.C. are as amended.

of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

- (b) Byrnes, as a director and stockholder of First Savings Bank, is an "institution-affiliated party" of First Savings Bank as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).
- (c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal Banking agency" with jurisdiction to initiate enforcement proceedings against First Savings Bank and/or its institution-affiliated parties. Therefore, Byrnes is subject to the authority of the OTS to initiate and maintain a civil money penalty assessment proceeding against him pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

2. OTS FINDINGS OF FACT

The OTS finds that Byrnes, in breach of his fiduciary duty and without regard for the safety and soundness of First Savings Bank:

- (a) caused First Savings Bank to service the debt of the controlling shareholders through accounts of First Savings Bank contrary to 12 C.F.R. § 563.170, 12 U.S.C. § 1468 and Regulation O;
- (b) caused First Savings Bank to make an inappropriate severance payment to former chairman of the board and president Rick Powell contrary to 12 C.F.R. § 563.161(b);
- (c) caused First Savings Bank to transfer an affiliated party loan in default to a third party, release the original affiliated party borrower, and advance additional funds in violation of 12 C.F.R. §§ 563.170 and 563.43. First Savings Bank subsequently suffered

loss from the transactions; and

- (d) caused First Savings Bank to make bonus payments to certain officers of First Savings Bank based on loan production contrary to 12 C.F.R. §§ 563.40(a) and 563.161(b).

3. CONSENT

Byrnes consents to the issuance by the OTS of the accompanying Order. Byrnes further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. FINALITY

The Order is issued under the authority of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). Upon issuance of the Order, it shall be a final Order that is effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. WAIVERS

Byrnes waives the following rights:

- (a) The right to be served with a written notice of the OTS's charges against him (See Section 8(i) of the FDIA, 12 U.S.C. § 1818(i));
- (b) The right to an administrative hearing of the OTS's charges against him (See Section 8(i) of the FDIA, 12 U.S.C. § 1818(i));
and
- (c) The right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

6. INDEMNIFICATION

Byrnes shall neither cause nor permit First Savings Bank (or any subsidiary thereof) to incur, directly or indirectly, any expense for the amount of

the civil money penalties assessed under the Order or any legal fees (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from First Savings Bank (or any subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of Byrnes in connection with this action shall be returned to First Savings Bank.

7. OTHER ACTIONS, PROCEEDINGS AND PARTIES

This Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation") and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation, Byrnes acknowledges and agrees explicitly to the following provisions:

- (a) Byrnes acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Byrnes' consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only. By signing this document Byrnes agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.
- (b) This Stipulation, the Order and the payment by Byrnes of any monies or providing any other financial relief as contemplated by the Order, does not release, discharge, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Byrnes that arise pursuant to this action or otherwise, and that may be or have been brought by any other governmental entity other than the OTS.
- (c) Byrnes' obligation to pay civil money penalties pursuant to this

Stipulation and the Order shall not be dischargeable in bankruptcy
under any circumstances.

WHEREFORE, Robert J. Byrnes executes this Stipulation and Consent to
Issuance of an Order of Assessment Civil Money Penalty, intending to be legally
bound hereby.

By:


ROBERT J. BYRNES

Date:

1/11/94

Accepted by:

OFFICE OF THRIFT SUPERVISION


FREDERICK R. CASTEN
REGIONAL DIRECTOR
MIDWEST REGION

Date:

January 27, 1995

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ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, Robert J. Byrnes ("Byrnes") has executed a Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation"); and,

WHEREAS, Byrnes, in the Stipulation, has consented to the issuance of this Order Assessment of Civil Money Penalty ("Order") pursuant to Section 8(1) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i).¹

NOW THEREFORE, IT IS ORDERED that within ten (10) days of the effective date of this Order, Byrnes shall pay to the Office of Thrift Supervision the sum of Three Thousand Dollars (\$3,000.00), by tendering a certified check to the Office of Thrift Supervision in that amount made payable to the Treasurer of the United States. The check shall be sent, together with a cover letter stating the name of the association and the resolution number, and a copy of the Order, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. A copy of the cover letter to the Controller's Division and a photocopy of the check shall be sent to Guadalupe Gonzalez, Assistant Regional Counsel, Office of Thrift Supervision, 122 West Carpenter Freeway, Suite 600, Irving, Texas 75039.

OFFICE OF THRIFT SUPERVISION

By: 

Frederick R. Casteel
Regional Director
Midwest Region

¹. All references to the U.S.C. are as amended.